

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TIMOTHY BUFORD,

Plaintiff,

v.

PAROLE AGENT MOUNTS, et al.,

Defendants.

CV F- 02-6187 OWW DLB P

ORDER DENYING PLAINTIFF'S
REQUEST TO FILE FOURTH
AMENDED COMPLAINT
Docs 56, 60.

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. section 1983. On March 13, 2006, this court issued Findings and Recommendations recommending that plaintiff's third amended complaint proceed on the Fourth Amendment and retaliation claims against defendants Mounts, Worley and Gipson only. On March 9, 2006, plaintiff filed a request to file a fourth amended complaint. On March 28, 2006, defendants filed a motion to strike the fourth amended complaint on the grounds that the Court has already screened out the claims plaintiff seeks to add.

Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend only by leave of the court or by written consent of the adverse party, and leave shall be freely given when justice so requires. Fed. R. Civ. Pro. 15(a). In this case, plaintiff has

1 previously amended and a responsive pleading has been served. Therefore, plaintiff may not file an
2 amended complaint without leave of the court.

3 The court has reviewed plaintiff's third amended complaint and proposed fourth amended
4 complaint and the events giving rise to plaintiff's claims are the same in both complaints. As
5 plaintiff is aware, this court has recommended dismissal of plaintiff's claims for Denial of Access to
6 the Courts, violation of the Americans with Disabilities Act and Intentional Infliction of Emotional
7 Distress. Plaintiff sets for no argument or justification explaining his attempt to amend to add these
8 claims which the court has found to be without merit. Plaintiff has been warned about this type of
9 maneuvering in other cases in this court. Indeed, an Order to Show Cause why sanctions should not
10 be imposed upon plaintiff for acting in bad faith has been issued by the Honorable Magistrate Judge
11 Snyder in *Buford v. Wasco State Prison* CV 01-5192 REC SMS P. In that case, plaintiff also filed a
12 motion to amend to add claims which were already dismissed by the Court. The Court stated, "As
13 plaintiff has demonstrated in this action and in case number CV F 00-6496 REC SMS P Buford v.
14 Vang, plaintiff is disinclined to accept the rulings of this court that do not go in his favor, even in the
15 absence of a sound basis for challenging the orders."

16 In light of this court's prior recommendation dismissing the very claims plaintiff seeks to
17 include in his proposed fourth amended complaint, Plaintiff's request to file a fourth amended
18 complaint which contains claims this court has already screened out is HEREBY DENIED. Plaintiff
19 is warned that further attempts to circumvent this court's orders will result in the issuance of an order
20 to show cause why sanctions should not be imposed for acting in bad faith.

21
22 IT IS SO ORDERED.

23 **Dated: April 26, 2006**
24 3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE